IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JAIPUR BENCH, JAIPUR

S.B.CIVIL WRIT PETITION NO.6620/1997.

Phoola Devi through LRs.

VERSUS

Union of India through Secretary, Min. of Def. & Ors.

07.12.2006.

HON'BLE MR.JUSTICE DALIP SINGH

Mr.Pradeep Choudhary, for the petitioner.
Mr.V.K.Joshi on behalf of
Mr.Bhanwar Bagri, for Union of India.
Mr.B.K.Sharma, Deputy Government Advocate.

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REPORTABLE

This writ petition has been filed originally by Smt.Phoola Devi whose son Surendra Kumar who was a 'Jawan' with Indian Army serving with 310, Field Regiment Artillery came on leave and after two months annual leave reported for duty on 04.11.1986. After that she has not heard anything from her son.

The petitioner's case further is that she received a letter on 14.05.1987 informing that she should submit an application for the payment of amount of Rs.5,079/- lying in the credit balance of her son who had been declared a deserter. The petitioner, as per the averments, sent her reply and also wrote letters inquiring about the whereabouts of her son. The petitioner finally received two letters dated 05.02.1988 and 08.02.1988 informing her that her son has deserted from service w.e.f. 06.11.1986 and as a result was declared as a deserter by Court of Inquiry held on 22nd December, 1986. She was

informed that whereabouts of her son were not known. A letter in this regard was also written to the police for searching the deserter. Copies of the aforesaid letters dated 05.02.1988 and 08.02.1988 have been placed on record as Annexures-1 and 2.

The petitioner's case is that the petitioner was under a bonafide impression that the Army Officials had lodged a report with the police regarding her son having gone missing, as was mentioned in the Annexure-1 and that the police would be searching for her son and consequently, under this bonafide belief the petitioner did not take any steps to lodge any formal First Information Report with the police. Ultimately, when nothing happened, the petitioner lodged a report on 18.06.1997, a copy of which has been filed as Annexure-3 to the writ petition. The said report, as per the petitioner, was lodged with Police Station Behror, District Alwar.

The petitioner has further submitted that Ministry of Defence, Government of India had issued a circular on 23.03.1992 for the grant of family pension and gratuity to the families of the Armed Forces Personnel who had disappeared suddenly and whose whereabouts are not known. The petitioner's case is that as per the aforesaid circular from the date of filing of the F.I.R. with the police, the dependants have been held entitled to the grant of Family Pension, as per the aforesaid circular. The copy of the circular dated 23.03.1992 has been filed as Annexure-4. The said circular reads as follows:-

"Government of India
Ministry of Defence

New Delhi, the 23rd March, 1992.

To

The Chief of the Army Staff
The Chief of the Naval Staff
The Chief of the Air Staff

Sub:- Grant of family pension and gratuity to the families etc. of Armed Forces personnel/pensioners who disappeared suddenly and whose whereabouts are not known.

Sir,

I am directed to refer to this Ministry's letters of even number dated 3rd June 1988 and 20th March 1990 and to say that the guidelines contained in the succeeding paragraphs will regulate payment of the benefits granted under the above noted letters.

2. The date of disappearance of the serving Armed Force personnel/pensioners will be reckoned from the date the First Information Report is lodged with the Police by the family and the period of one year after which the benefits of family pension and gratuity are to be sanctioned, will be reckoned from this date. However, the benefits to be sanctioned to the family, etc., of the missing personnel will be based on and regulated by the emoluments drawn by him and the rules/orders applicable to him as on the last date he/she was on duty including authorized periods of leave. Family pension at normal/enhanced rates, as may be applicable in individual cases, will be payable to the families of missing personnel. Family pension were sanctioned at pre-1-1-1986 rates will be revised and consolidated w.e.f. 1.1.1986 in terms of the Govt of India letter No.1(4)/87/D(Pens/Sers) dt.

27th July, 1987, as amended from time to time.

3. In the case of missing pensioners, the family pension at the rates indicated in the PPO will be payable and authorized by the Pension Sanctioning Authority. Where the PPO does not contain this information, the Pension Sanctioning Authority will take necessary action to sanction the family pension as due, as provided in para 2 above.

4. Death gratuity will also be payable to the families, but not exceeding the amount which would have been payable as Retirement gratuity if the person had retired. The difference between retirement gratuity and death gratuity shall be subsequently payable after the death is conclusively established or on the expiry of seven years period from the date of missing.

5. An indemnity bond will be obtained for the above propose from the family members etc. in the formats enclosed as Appendix 'A' (for missing personnel) and as Apendix 'B' (for missing pensioners) to this letter, which have been prepared by the Deptt of Pension & Pensioners Welfare in consultation with Deptt of Legal Affairs.

6. Cases already settled otherwise, than in accordance with this letter need not be reopened unless such a reopening will be to the advantage of the beneficiaries.

7. This issues with the concurrence of Finance Division of this Ministry vide their U.O.No.285/Pen of 1992.

8. Hindi version will follow.

(Based on Deptt of Pension & Pensioners Welfare O.M.No.1/17/86-P&PW (C) dt.25.1.1991)

Sd/-"

The petitioner’s case was that in the light of the aforesaid circular, as has been mentioned in Annexure-1 by the respondents dated 05.02.1988, they had informed the police in this regard even for tracing out the son of the petitioner. The petitioner submits that the aforesaid letters which were sent by the respondents to the police, as mentioned in letter dated 05.02.1988 should be considered to be the date for the lodging of First Information Report and, therefore, on the basis of the aforesaid date of lodging of First Information Report, the petitioner should be sanctioned the family pension on the basis of the circular dated 23.03.1992. In pursuance of the aforesaid, the petitioner submitted an application as a notice for demand of justice through her counsel on 29.05.1997 to the respondents but no reply was received. Hence, the present writ petition seeking a direction for the grant of family pension and other pensionary benefits in the light of the circular dated 23.03.1992, quoted above.

A notice of the writ petition was issued to the respondents and the respondents submitted their reply wherein it has been submitted by the respondents that after returning from annual leave, the son of the petitioner “rejoined his duty on 04.11.1986. Later on he absented himself without leave from Unit lines on 06.11.1986 and in this way he absented himself without leave from 310 Medium Regiment”. It has further been submitted that since there was no information regarding his whereabouts, he was declared illegally absent from that day. It is the contention of the respondents that the respondents

had informed the petitioner regarding his absence vide their letter dated 14th May, 1987. it is further case of the respondents that son of the petitioner had been declared as deserter w.e.f. 06.11.1986. The respondents' case further is that since the son of the petitioner was treated as deserter and dismissed from Army Service, the question of lodging FIR by the respondents, in the instant case, did not arise. It is the case of the respondents that it was for the petitioner to have made efforts to look for her son or to lodge FIR, when she was informed by letter dated 14.05.1987 in this behalf. It is the further case of the respondents that the petitioner remained silent for all these years and it was only on 18.06.1997 that for the purpose of taking advantage circular dated 23.03.1992 the petitioner lodged FIR with the Police which has been filed as Annexure-3 to the writ petition. So far as the circular dated 23.03.1992 is concerned, the respondents have contended that the said circular is not applicable in the case of the petitioner but is only application in the cases of those army personnel who have gone missing suddenly and a proper communication to that effect is received from the next of kin well in time and not in such cases like that of the petitioner's son who had absented himself from duty and was deserter as he had absented himself from Unit Lines w.e.f. 06.11.1986. The respondents have also submitted that it is not the duty of the respondents to make any search for the person like petitioner's son who has absented himself from duty illegally. It is in these circumstances that the respondents prayed that the writ petition may be dismissed.

During the course of hearing with a view to satisfy regarding the contents of the writ petition and the fact about the lodging of report by the petitioner as well as by the respondents this court on 08.09.2006 had directed the Superintendent of Police, Alwar to submit before this court after making an inquiry regarding the result of the investigation of the report dated 18.06.1997 filed by the petitioner and also regarding the report submitted by the Army Authorities vide letter of Commanding Officer regarding the son of the petitioner who had gone missing w.e.f. 06.11.1986, as per their letter dated 07.11.1986.

In response to the above, an affidavit has been filed by Shri Rajesh Kumar Gupta, Dy.S.P., Behror Circle, District Alwar, which has been placed on record. As per the aforesaid affidavit, Shri Rajesh Kumar Gupta, Dy.S.P., Behror Circle has deposed as under:-

> “As per the official record a Rapat No.720 lodged at 10.00 A.M. on 18.06.1997 by the mother Smt.Phoola Devi with regard to missing of her son Surendra Kumar. The copy of the application and the Rapat are being placed on record and marked as Annexure-A/1 & Annexure-A/2 respectively.”

He has further deposed in para 3 as under:-

> “That the deponent has also enquired into the matter with regard to missing of gunner Surender Kumar from the Army Office as an application said to have been made by his

> mother Smt.Phoola Devi on 18.01.1988 in pursuant to the same the army officials replied the application filed by the petitioner vide its letter dated 08.02.1988. Copies of the application dated 18.01.1988 as well as the reply of the letter dated 18.01.1988 are being placed on record and marked as Annexure-A/3 & Annexure-A/4 respectively."

Along with the affidavit, a letter written by the officiating Officer Commanding has also been filed as Annexure-A/12 dated 07.11.1986 which was sent by the respondents to the S.P., Alwar informing him that Surendra Kumar whose particulars have been given in the said letter has deserted/absented without leave w.e.f. 06.11.1986. The police was requested to take steps to apprehend the above named individual and inform the nearest Regimental Centre and arrange his dispatch under the police escort to the Regimental Centre. The Dy.S.P. has submitted that a letter to this effect was also dispatched to the Secretary, Zila Sainik Board, Alwar along with certain documents and information, as contained in Annexure-13, regarding Next of Kin of Surendra Kumar.

Thus, from the above, following facts emerge that Surendra Kumar, son of the petitioner, after having availed the annual leave, rejoined on the Unit Lines on 04.11.1986 and was not heard after 06.11.1986 as he was reported to have gone missing from the Unit Lines. It is also borne out that Army Authorities informed the police vide their letter Annexure-12 about the disappearance of Surendra kumar on 07.11.1986 and requested the police to apprehend

the deserter and to dispatch him to the Army Authorities under police escort after apprehending him. It has also been borne out from the pleadings that Surendra Kumar has never been heard of since 06.11.1986. It has also been borne out from the record that the respondents informed the petitioner vide their letter (Annexure-1) dated 05.02.1988 that Army Authorities have written to the police for tracing out the son of the petitioner and that they have also not been able to trace out the son of the petitioner, as is evident from Annexure-1.

Thus, so far as the information to the police with regard to the disappearance of the son of the petitioner is concerned, the Army Authorities have themselves written a letter dated 07.11.1986 (Annexure-A/12) which has been filed along with additional affidavit of Dy.S.P., Behror Circle, Alwar which fact finds corroboration from the letter (Annexure-1) written by the Army Authorities on 05.02.1988. Thus, so far as the requirement of filing of F.I.R. in terms of Section 154 Cr.P.C. is concerned, the information with regard to the disappearance of the son of the petitioner was given as early as on 07.11.1986 by the respondents themselves to the Police at Alwar (Rajasthan).

In view of the above, so far as the requirement under the circular of the Ministry of Defence, Government of India, New Delhi dated 23.03.1992 (Annexure-4) is concerned of lodging the F.I.R. with respect of the person having disappeared as required by para 2 of the circular, in my opinion, that

requirement stood fulfilled by the letter of the respondents (Annexure-A/12) dated 07.11.1986. Subsequent report given by the petitioner on 18.06.1997 who is the mother of Surendra Kumar, the 'Jawan', who went missing, it may be assumed, as is suggested by the learned counsel for the respondents that the said report was only lodged with a view to take advantage of the circular only reiterating the earlier position which was there in the letter dated 07.11.1986 sent by the Army Authorities to the Superintendent of Police, Alwar regarding disappearance of the son of the petitioner as she had no copy of the information given by the Army Authorities to the Police at Alwar on 07.11.1986. In my view, therefore, the requirement under the circular dated 23.03.1992 of lodging of F.I.R. with the Police as required in para 2 thereof stands fulfilled by the letter of the respondents themselves dated 07.11.1986. So far as the second requirement that even after the lodging of F.I.R. the said person ought not to have been found and remained untraced is concerned, it is not in dispute that even till date the son of the petitioner has remained untraced and had not been heard of, therefore, it can safely be presumed that the petitioner's son has "disappeared".

Learned counsel for the petitioner relied upon the judgment of Punjab and Haryana High Court in Writ Petition No.6317/1994 Kamlesh Devi Vs. Union of India & Others decided on 13.01.1995 by the Division Bench of Punjab and Haryana High Court. Learned counsel for the petitioner submits that while taking into consideration the circular dated 23.03.1992, the

Division Bench of the Punjab and Haryana High Court in the aforesaid case allowed the pensionary benefits to the dependents.

The facts of the aforesaid case are that the husband of the petitioner in that case went missing and a warrant of arrest dated 02.12.1990 was addressed to the Superintendent of Police, Ropar issued by the Officer Commanding. It was further case that the husband of the petitioner in that case Naik Naresh Singh willfully absented himself w.e.f. 11.11.1990. The petitioner in that case then moved an application before the Commanding Officer inquiring about the whereabouts of her husband and then she was informed that he was untraceable. Thereafter, no further information was conveyed to her regarding disappearance of her husband Naresh Singh. The petitioner in that case thereafter submitted an application in terms of the Government circular prevalent at that time for the grant of pensionary benefits. The petitioner in that case was then informed that since her husband had been declared as deserter, no pensionary benefit were admissible to her. Since the desired relief was not given to the petitioner in that case, the petitioner approached the Punjab and Haryana High Court by means of the writ petition. The respondents, as in the present case, submitted before the Punjab and Haryana High Court that Naresh Singh has been declared as deserter and, therefore, the pensionary benefits could not be given to his family in the light of the circular. It was the case of the respondents that only in the case of such persons who had disappeared and were not

deserters, the pensionary benefits would be admissible. In this background, the Punjab and Haryana High Court while allowing the writ petition held as follows:-

> "After hearing learned counsel for the parties, we find that the present petition deserves to succeed. Annexure P1 on which reliance has been placed by the petitioner deals with the release of certain pensionary benefits in respect of Armed Forces personnel who are missing and goes on to state that such benefits are to be conferred on the family of service personnel who had <u>suddenly</u> <u>disappeared</u> while in operational and non-operational service and whose whereabouts were not known. Learned counsel for the petitioner has relied on this annexure to contend that the disappearance envisaged in Annexure-P1 would pertain to any disappearance unless it could be positively shown that the disappearance was on account of desertion and merely because a person has been declared to be a deserter would not conclusively proves that this was the case. Applying this argument to the facts of the present case, it has been urged that no conclusive proof had been tendered to indicate that Naik Naresh Singh had deserted. As against this Mr.Vinay Mittal, learned counsel for the respondents had relied on the averments made in the reply.
>
> Annexure-P1, as already indicated, takes into account the hardship suffered by the families of armed force personnel who have disappeared and whose whereabouts are not known. It has been specifically mentioned therein that a person who had disappeared was deemed to be dead after a period of seven years had elapsed from the date of disappearance as envisaged by Section 108 of the Indian Evidence Act but this provision had caused distress to the families who had to wait for so long to get

> the terminal benefits. It was in this light that the said annexure was issued and the period of seven years was reduced to one year. We are of the view that the case of Naik Naresh Singh was fully covered by this annexure. Mr.Mittal's argument that if subsequently Naresh Singh was found or it was conclusively proved that he had deserted, it would be difficult to recover the amount already paid to his family, is also misconceived in view of paragraph3(ii) of Annexure-P1 in which it has been stated that the claimant would be required to furnish an indemnity bond with two solvent sureties to the effect that all payments thus made would be recovered from the claimants if the missing person was to reappear."

Having held so, the writ petition was allowed by the Division Bench of the Punjab and Haryana High Court with costs.

In the present case also, the circular (Annexure-4) has taken into account the cases of disappearance of serving Armed Forces personnel, as mentioned in para 2 and also as in the Punjab and Haryana High Court's judgment has taken care to see that nothing should have been heard of about the person who has gone missing for a period of one year after lodging of the report. In para 5, it has been clearly stipulated that an indemnity bond shall be obtained from the family members before such pensionary benefits are sanctioned. Thus, the intention clearly appears to be that a family of the Armed Forces personnel who disappeared suddenly and whose whereabouts are not known, as contained in Annexure-4 dated 23.03.1992, were to be given

pensionary benefits on account of disappearance of their Kith and Kin on whom they were dependent.

The submission of the learned counsel for the petitioner is that the word “disappearance” as it appears in the circular (Annexure-4) dated 23.03.1992 is of very wide amplitude and would take into account disappearance of any sort including as contended by the learned counsel for the respondents that the son of the petitioner absented himself from the Unit Lines and was declared deserter.

In the instant case, the son of the petitioner even after nearly 20 years has not been heard of. The respondents while issuing the circular (Annexure-4) dated 23.03.1992 communicated to the petitioner the exclusion of the cases of disappearance on account of desertion. So far as 'desertion' not being included in disappearance is concerned, the respondents could have easily provided for exclusion of cases of desertion in the said circular as it can safely be presumed that the respondents while issuing the circular were fully aware about the various terminologies being used by the Armed Forces for determining the various kinds of disappearance, such as desertion, absent from duty without leave, missing in action and so on and so forth. Thus, using the term “disappearance” with reference to serving Armed Forces, present in para 2 of the circular dated 23.03.1992, in my considered view, is of the widest connotation and would include disappearance on account of every kind. This assumes importance as the circular has been issued for mitigating the hardship of the dependents. In giving a narrow interpretation

of the word “disappearance”, the circular would lose its importance in so far as the intention to mitigate the hardship of the dependents is concerned. The respondents not having excluded the cases of deserters or persons who are absent without leave but have used the term 'disappeared' the intention is to give it a wider application to cover cases of all kinds of disappearance of person who have not been heard of for one year.

In that view of the matter, as has been held by the Punjab and Haryana High Court in similar circumstances, I am also of the view that the case of the petitioner for the grant of pensionary benefits is covered by the circular (Annexure-4) dated 23.03.1992. Since in the instant case, as per the letter (Annexure-12) dated 07.11.1986 itself the information with regard to disappearance of the son of the petitioner had been conveyed to the police authorities by the Commanding Officer of the petitioner’s son, the relevant date would be reckon for the purpose of F.I.R. as 07.11.1986.

This writ petition is consequently allowed, as indicated above. In the instant case, the petitioner would also be entitled to the benefits under para 4 of the circular dated 23.03.1992 as it has been laid down that on the expiry of the period of seven years from the date of missing, the dependants would be entitled to the Death Gratuity etc. payable in certain cases. Since the son of the petitioner went missing on 06.11.1986 and nothing has been heard of about the son of the petitioner for more than seven

years, in the instant case, the petitioner would be entitled to invoke the aforesaid right as provided under para 4 of the circular (Annexure-4). The respondents are directed to determine the arrears in the light of the circular dated 23.03.1992 (Annexure-4) and all other circulars in that behalf applicable in the case of the petitioner and pay the aforesaid amount to the petitioner within a period of three months.

It may also be mentioned here that the petitioner died during the pendency of the writ petition on 10.01.2002, as such, the benefits which had accrued to her during her lifetime would accrue to the legal representatives who have been impleaded in place of the deceased petitioner and paid accordingly with the period of three months. It has often come to the notice of the court that welfare measures taken by the Government for the Ex-Servicemen/their dependents and War Widows etc. do not reach the concerned persons as they live in remote areas and are not even aware about their welfare measures. There must be given wider publicity in local newspapers and Door Darshan Channels in regional languages so that the persons concerned can avail the benefits of these measures. In the instant case, the son of the petitioner went missing in 1986 and could only apply for the benefit of the Scheme issued in 1992 by the Government of India in 1997 even though there were similar Schemes in operation previously. The respondents are thus, directed to issue regular news updates on these measures commencing March, 2007 on a monthly basis, as

mentioned above, with copies to be made available with the Teshildars with whom a list of dependents of Ex-Servicemen and Ex-Servicemen should be kept who may avail these benefits.

Consequently, the writ petition is allowed, as indicated above.

(DALIP SINGH),J.

Solanki DS, Jr.P.A.